

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

2520 Venture Oaks Way, Suite 350
San Diego, CA 95833
(916) 274-5721
FAX (916) 274-5743
Website address www.dir.ca.gov/oshsb



SUMMARY PUBLIC MEETING/ BUSINESS MEETING August 16, 2012 Sacramento, California

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman John MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:05 a.m., August 16, 2012, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present

John MacLeod
Bill Jackson
Laura Stock
David Harrison
Dave Thomas
Barbara Smisko

Board Members Absent

Hank McDermott

Board Staff

Marley Hart, Executive Officer
Mike Manieri,
Principal Safety Engineer
David Beales, Legal Counsel
David Kernazitskas,
Associate Safety Engineer
Bernie Osburn, Staff Services Analyst
Sarah Money, Executive Assistant

Division of Occupational Safety and Health

Deborah Gold, Deputy Chief of Health

Others present

Mark Roy McGrath, AIDS Healthcare Foundation	Robert Johnson, OABA
John L. Bobis, Director of Reg. Affair, Aerojet	Kate Smiley, AGC-CA
Wendy Holt, V.P. Product Affairs and Safety, CSATF/AMPTP	David Shiraishi, OSHA
Jack Kastorff	Dan Leacox, GT
Kevin Bland, Esq., WSC/RCA/CFCA/ULCC	Patrick Corcoran, Cal/OSHA
Amalia Neidhardt, DOSH	Bruce Wick, CALPASC
Patrick Bell, DOSH	Bill Taylor, PASMA – South Chapter
	Betty Fracisco, Garrett & Jensen
	James E. Hall “Jim”, CalPRO
	Mike Donlon, DOSH
	Eric McClaskey, IUEC Local 8

Mr. MacLeod presented Mr. Jack Kastorff with a plaque on behalf of the Board to recognize and thank him for his time and dedication during his tenure on the Board from July 10, 2007 to June 1, 2012.

B. OPENING COMMENTS

Mr. MacLeod indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2

Kevin Bland, representing the Utility Line Clearance Coalition, the Western Steel Council, the Residential Contractors Association, and the California Framing Contractors Association. On behalf of the ULCC, Mr. Bland thanked Mr. George Hauptman of the Board Staff for his work with them on the rulemaking regarding tree maintenance that is on the Board's business meeting agenda. On behalf of the WSC, RCA, and CFCA, Mr. Bland asked the Board to address the issue regarding a provision of the crane regulations dealing with forklifts which states that if a crane has a hoist or hook, then it falls within the crane regulations. He feels that they need to fix this issue because though this provision seems simple, it would require certified crane operator (CCO) training and a whole host of crane regulations for which there is no forklift or hoist category in CCO training. He hopes that with the Board's and staff's assistance, this issue can be addressed in the future and will not fall to the side.

Mark McGrath, Public Health Consultant, speaking on behalf of the AIDS Healthcare Foundation, commented in support of Petition 513 - Bloodborne Pathogen Protection, Adult Film Industry. Mr. McGrath stated that he wanted to revisit some of the points that he discussed at the July 19, 2012 Board meeting, as well as bring up some new points. The issue being brought up by Petition 513 has festered since 1998 and has transcended two Division Chiefs. Mr. McGrath stated that Division Chief Ellen Widess and her predecessor, Len Welsh, both support protecting workers in the adult film industry. He also stated that the City and County of San Francisco, as well as the Los Angeles County Department of Public Health, have given the industry detailed recommendations for proper medical monitoring and screening, but the industry is not following them, nor is the industry picking up the tab for this testing. He stated that this issue can be resolved very effectively and fairly with condoms, and he stated that his organization will provide thousands of condoms to any adult film producer who asks for them.

Bob Johnson, President of the Outdoor Amusement Business Association, commented on Petition 520 – Certification of Independent Inspectors for Portable Amusement Rides. He explained that in the laws established in the 1960's regarding portable amusement rides, portable ride owners were given the right to employ third-party inspectors to perform state inspections on their rides, in addition to state inspectors, and that many other states also allow third-party inspectors to perform state inspections on portable amusement rides. Mr. Johnson came before the Board in 2010 and presented this petition, and the Board referred the petition to DOSH for further regulation. Effort was made to make this happen, and two former DOSH

inspectors paid their fees, took the exam, and became certified independent inspectors. However, DOSH later revoked those fees, and Mr. Johnson and his group do not understand why. Mr. Johnson and his association respect the Board's decision to hand this over to DOSH for further regulation, but they are continuing to be frustrated by DOSH because nothing is getting done, and Mr. Johnson asked the Board for assistance.

Betty Fracisco, of the Garrett and Jensen law firm, and Jim Hall, President of CalPRO, echoed Mr. Johnson's concerns.

C. ADJOURNMENT

Mr. MacLeod adjourned the public meeting at 10:41 a.m.

II. PUBLIC HEARING

A. PUBLIC HEARING ITEM

Mr. MacLeod called the Public Hearing of the Board to order at 10:42 a.m., August 16, 2012, in the Auditorium of the State Resources Building, Sacramento, California.

Mr. MacLeod opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7
Article 7, Section 3328(b)
Machinery and Equipment, Used and Operated

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is ready for the Board's consideration and the public's comment.

The following public comments were made on this proposal.

Bill Taylor, representing Public Agency Safety Management Association – South Chapter, stated that the addition of the language in this proposal would include all manufacturers' recommendations as parts of the regulation and would require owners to go through and revise the owner's manual for every piece of equipment and safety device that they have, some of which are very lengthy already.

Bruce Wick, CALPASC, concurs with Mr. Taylor's comments. He feels that there is a contrast in facts between the summary of the Appeals Board decision, the initial statement of reasons (ISOR), and the decision. He feels that the summary in the ISOR does not fairly express what was really said and requires the regulated community to go directly to the decision each and every time. He feels that this decision should have focused more on 3328(a) to resolve the problems presented by the decision.

Kevin Bland, representing the California Framing Contractors Association, Western Steel Council, and the Residential Contractors Association, expressed great concern regarding the language in this proposal. He feels we need to distinguish between product liability and safety, and that recommendations are permissive statements, not requirements. He also feels that the breadth of this proposal will draw in many points that are not related to employee safety and points that are permissive, instead of required. He was concerned that aspects of the manufacturer's recommendations pertain to product liability and not safety. Mr. Bland also indicated that existing regulations address the problem that is the subject of the underlying Appeals Board decision and that DOSH merely cited the wrong provision.

Ms. Stock asked Mr. Bland about alternative ways to address this situation and asked those who are opposed to the decision how they would resolve this situation. Mr. Bland responded that the correct standard should be applied to the hazard that occurred out on the site (i.e. crane standards for crane lifts, aerial standards for aerial lifts). He stated that there is not a need to fix the general standard when there are existing standards that can be applied and in violation of.

John Bobis, of the Bobis Group and Aerojet, is also concerned about this proposal. He feels that the change is not necessary or appropriate. He does not think that it is appropriate for the Board to adopt a recommendation of an unknown manufacturer as suggested in the proposal.

Mr. Jackson added that he is concerned about fixing a mistake that was made by the compliance personnel who cited the wrong section. He feels that it is inappropriate for the Board to come along behind the Division and fix regulations to make them more global and applicable when the Division should have used the correct section in the first place.

Mr. MacLeod then introduced the next item noticed for Public Hearing:

2. TITLE 8: **LOGGING AND SAWMILL SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 13
Article 11, Section 6325
Fueling of Helicopters Used in Logging Operations

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is ready for the Board's consideration and the public's comment.

There were no public or Board comments on this proposal.

B. ADJOURNMENT

Mr. MacLeod adjourned the Public Hearing at 11:07 a.m.

III. BUSINESS MEETING

Mr. MacLeod called the Business Meeting of the Board to order at 11:08 a.m., August 16, 2012, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDERS FOR ADOPTION

1. TITLE 8: **HIGH-VOLTAGE ELECTRICAL SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 5, Article 38
Section 2950
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7, Article 12
Sections 3420-3428
Tree Work Maintenance or Removal
(Heard at the March 15, 2012, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Thomas that the Board adopt the proposal.

A roll call was taken, and all members present voted "aye." The motion passed.

2. TITLE 8: **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4
Article 12, Section 1600
Article 15, Sections 1610.1, 1610.3, 1610.4, 1610.9, 1611.1, 1612.3, 1613,
1613.2, 1613.10, 1616.1, 1617.1, 1617.2, 1617.3, 1618.1, 1619.1 and
New Sections 1613.11 and 1613.12
GENERAL INDUSTRY SAFETY ORDERS
Division 1, Chapter 4, Subchapter 7
Article 91, Section 4885
Article 98, Section 4999
Cranes & Derricks in Construction (Clean-Up)
(Heard at the June 21, 2012, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Harrison and seconded by Mr. Thomas that the Board adopt the proposal.

Mr. Harrison addressed Mr. Bland's comments regarding this rulemaking. He stated that the Operating Engineers support this rulemaking and have even supported stricter standards regarding forklifts. They are accepting the rules as proposed and moving forward, and he hopes that the Board continues to work with stakeholders on the forklift issue.

A roll call was taken, and all members present voted “aye.” The motion passed.

3. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7
Article 59, Section 4297
Definitions for Woodworking Machines and Equipment
(Heard at the July 19, 2012, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board’s adoption.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. Jackson that the Board adopt the proposal.

A roll call was taken, and all members present voted “aye.” The motion passed.

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Don Austin
Petition File No. 529

Petitioner requests that the Board amend Title 8, General Industry Safety Orders, Appendix F, Determination and Application of Age Corrections to Audiograms, as referenced in Section 5097(d)(9).

Ms. Hart summarized the history and purpose of the petition, and asked the Board to deny the petition decision for the reasons stated by the Board staff and the Division.

MOTION

A motion was made by Mr. Jackson and seconded by Mr. Thomas that the Board adopt the proposed petition decision denying the petition.

A roll call was taken, and all members present voted “aye.” The motion passed.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales asked the Board to modify the consent calendar by deleting the six Gen 2 at 150 items (no proposed decision has been prepared). He asked the Board to adopt the proposed decisions in the remaining matters, all of which grant variances.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. Harrison to adopt the consent calendar as modified.

A roll call was taken, and all members present voted “aye.” The motion passed.

D. OTHER

1. Division Update – Possible Rulemakings (Elevator Safety Orders and Other Matters)

Ms. Gold provided an update on the following rulemaking activities that the Division is working on:

- a. Elevator Safety Orders: A 2013 public draft of the ASME code has been released, and there is a meeting regarding that draft in October. Ms. Gold is not sure why the Elevator Code has not been updated more regularly. The Division is planning to use the 2013 codes as the base for Group 5 elevators instead of adopting a Group 5 that answers back to the 2010 code. The Division would also like to amend the Group 4 orders regarding alternate suspension means, issues relating to car-top railings, and possibly location of switches, which have been the subject of several typical variance requests. The Division has identified the changes that they wish to make, and the Elevator Unit staff is working on the language. The Division believes that they will be noticing their advisory committee meeting for this in the next 1-2 months and having an advisory committee sometime in October or November, and they plan to bring the documents to the Board by the end of this year or beginning of next year, depending on how the advisory committee goes.

Due to budget constraints, the Division has not paid for staff to attend the consensus standard meetings, but Deborah Tudor and Dan Barker have been paying their own way to attend ASME and other critical meetings. They are also keeping up with revisions and circulated drafts through other informal channels. An elevator group in the Seattle region is also working on getting regional meetings regarding elevator codes to get the west coast involved.

- b. Petition 520 – Certified Inspectors and Inspections of Portable Amusement Rides: Ms. Gold stated that Suzanne Marria instructed her to inform the Board that settlement talks regarding the fee increase are in progress, and the portable ride owners have made the issue regarding certifying independent inspectors for portable amusement rides part of the settlement discussion, and she is not allowed to discuss settlement discussions.

Mr. MacLeod pointed out that, last month, the Board was promised something by the end of the year regarding this. Ms. Gold stated that the Division still plans to do that. The Division has regulations in several other public safety units for certifying independent inspectors, but in the case of portable amusement rides, they do not, and they do not believe they can certify independent inspectors for portable amusement rides in the absence of regulations for it. The Division is actively looking for a way to assure the quality of

private inspectors and ensure that competent inspections are made. They plan to create a Division rulemaking for this and have an advisory committee that includes ride operators, state fairs, and consumer advocates before the beginning of next year.

- c. Petition 513 - Bloodborne Pathogens Protection, Adult Film Industry: The Division is continuing enforcement activity based on Section 5193 and is continuing to talk with their healthcare partners and constituents to see how they can move forward on this issue. They do not anticipate bringing a proposal to the Board before the end of this year due to the fact that there are several legal issues that need to be sorted out.

Mr. MacLeod pointed out that Steve Smith reported at last month's meeting that the Division would bring a proposal on this issue to the Board before the end of this year. Now that Ms. Gold stated that it will not come before the end of the year, Mr. MacLeod asked when the Division anticipates bringing a proposal to the Board. Ms. Gold stated that the written update that the Division provided the Board with last month did not say that a proposal would be brought to the Board before the end of the year, and Mr. Smith was mistaken in saying that. She also stated that another draft will be circulated to the advisory committee members for comment, and there are several complicated issues that still need to be worked out regarding this matter, and that she will keep Ms. Hart updated on the status.

- d. Safe Patient Handling: The Division anticipates a draft of the regulation to go back out to the advisory group one more time in early September. The advisory group will have a month to respond back while the staff works on the Initial Statement of Reasons. The Division anticipates bringing this proposal to the Board in the fall and will keep the Board updated on the timeline.
- e. Hotel Housekeepers: The first advisory committee meeting for this item will be held on October 23 in Oakland. More information on that will be coming in the next few weeks.
- f. Petition 519 - Required First Aid Supplies: Mike Horowitz is still working this project, but had to be pulled away to some other things. The Division plans to bring this back to the Board by the end of the year.
- g. Petition 524 – Respiratory Protection for Emergency Responders, Section 5199: The Division anticipates this going to the Board in the next month or so.
- h. Ethylbenzene: Bob Barish is finishing up the documents for this item, and the Board should receive the package by the end of this week.

Mr. MacLeod asked for an update on the Tunnel Safety Orders. Ms. Gold stated that the Board should have gotten the documents from the Division already. Ms. Hart stated that the hard copy documents were received yesterday, as well as most of the electronic documents, and that Patrick Bell would be stopping by the office today to deliver the rest. She had alerted the Division at that time that the Board Staff could not start their work until the entire package is received. Ms. Gold pointed out that the Board has already reviewed this package once several years ago. However, Ms. Hart stated that this is a new review for the Board staff because the

last review was done in 2008 or 2010, and since then, there have been 6 advisory committees on this item, so the Board staff will start this as a new project from scratch.

Ms. Hart requested that since many of the items mentioned in the Division Update will be coming to the Board at the end of this year, she would like the Division to inform Board staff as soon as possible when dates change because the Board staff configures their workload around the Division's projected dates.

2. Legislative Update

Mr. Beales stated that Assembly Bill 2346 was amended slightly, and it passed a Senate appropriations committee. Assembly Bill 2676 also successfully passed a Senate appropriations committee. Senate Bill 432's deadline date by which the Standards Board is to adopt regulations was changed by an amendment from September 1, 2012 to December 1, 2012. Some changes were also made to Senate Bill 432 that give some leeway to the hotel industry in replacing flat sheets with fitted sheets and that allow alternatives to fitted sheets.

3. Executive Officer's Report

Ms. Hart stated that the Board staff is in the process of updating the public mailing list. A new mailing list form was sent out to everyone who is currently on the mailing list asking them to update their information. Ms. Hart asked the public in attendance at today's meeting to please send in their updated mailing list information by August 31, 2012 if they wished to remain on the public mailing list. Anyone who does not respond by August 31 will be deleted from the mailing list.

4. Future Agenda Items

None were suggested.

E. ADJOURNMENT

Mr. MacLeod adjourned the Business Meeting at 11:52 a.m.